

## **2015-16 Court Decisions**

### **I. Sales Tax**

#### **A. Manufacturing Equipment**

##### **Brandenburg Industrial Service Co. v. Hamer, No. 2013 MR 001292, 2015 IL App (2d) 140741, (June 5, 2015)**

Brandenburg is both a manufacturer of steel and metal products and a provider of demolition, environmental remediation and site clean-up services. Brandenburg uses much of the demolished materials, scrap and waste products as materials for its manufacturing operations. The issue in dispute is whether equipment used at Illinois job sites qualifies for the manufacturing, machinery and equipment exemption. The circuit court of DuPage County ruled that the equipment qualified for exemption.

The Department appealed. The primary basis of the appeal was that Brandenburg's evidence contained insufficient documentation that the equipment in Illinois was used primarily for manufacturing rather than for demolition. Brandenburg's evidence was testimony and documentation based upon Brandenburg's study of its overall operations and the percentages that certain equipment was used for manufacturing. The Department's position is that these studies were merely general information about overall operations and lacked the specificity needed to prove that the actual equipment used in Illinois was used primarily in an exempt manner.

On appeal, the court held that there are issues of fact precluding summary judgment. The court distinguished a prior Cook County decision relied on below because there was no evidence that the same equipment was at issue or that it was used in the same manner, and because that decision was issued after trial with a more extensive evidentiary record. The court also determined that an affidavit submitted by Brandenburg opining that the equipment was used primarily in its manufacturing process was insufficient to rebut the Department's *prima facie* case because it was not supported by any documentary evidence.

#### **B. Cigarette Floor Tax**

##### **Casey's Marketing Co. v. Hamer, 2016 IL App (1<sup>st</sup>) 143485 (March 1, 2016)**

Casey's sought a refund of monies paid pursuant to the "floor tax" provisions of the Illinois Cigarette Tax act passed in 2012. The floor tax applied to the extent that the calendar year 2012 average monthly volume of cigarette stamps in the distributor's possession exceeded the average monthly volume of stamps purchased by the distributor in 2011. Casey's challenged the constitutionality of the cigarette tax increase on uniformity grounds. The trial court entered summary judgment in favor of the State and the appellate court affirmed.

Casey's argued that the formula employed to determine who owed the floor tax and in what amount resulted in a disparate tax burden amongst distributors. The appellate court rejected the uniformity challenge, noting that there was a serious question as to whether the General Assembly had "classified" the potential taxpayers at all because, on its face, the tax applies to all distributors meeting the statutory criteria. To the extent that there were classifications implicating uniformity concerns, the court found that such classifications were reasonably related to legitimate legislative interests in implementing the tax based on volume and current economic activity, thus satisfying the court's narrow uniformity inquiry.